

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

RIN 0648–AY55

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Caribbean Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan (FMP) for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendments 2 and 5) for review, approval, and implementation by NMFS. These amendments would establish annual catch limits (ACLs) and accountability measures (AMs) for queen conch and all reef fish units or complexes that are classified as undergoing overfishing or that contain sub-units which are classified as undergoing overfishing (i.e. snapper, grouper and parrotfish); allocate ACLs among island management areas and, in Puerto Rico only, among the commercial and recreational sectors; revise the composition of the snapper and grouper complexes; prohibit fishing for and possession of three parrotfish species (midnight, blue, rainbow); establish recreational bag limits for snappers, groupers, and parrotfishes; and establish framework procedures for queen conch and reef fish species. Amendments 2 and 5 would also revise management reference points and status determination criteria for queen conch, snappers, groupers, and parrotfishes. The intended effects of Amendments 2 and 5 are to prevent overfishing of queen conch and reef fish species while maintaining catch levels consistent with achieving optimum yield (OY).

**DATES:** Written comments must be received on or before November 25, 2011.

**ADDRESSES:** You may submit comments on Amendments 2 and 5, identified by “NOAA–NMFS–2010–0028” by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Bill Arnold, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA–NMFS–2010–0028” in the keyword search and click on “search.” To view posted comments during the comment period, enter “NOAA–NMFS–2010–0028” in the keyword search and click on “search”. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

Electronic copies of Amendments 2 and 5, which include a Final Environmental Impact Statement (FEIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review (RIR), and a fishery impact statement may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bill Arnold, Southeast Regional Office, NMFS, telephone: 727–824–5305, e-mail: [Bill.Arnold@noaa.gov](mailto:Bill.Arnold@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

In the exclusive economic zone (EEZ) of the U.S. Caribbean, the queen conch

fishery is managed under the Fishery Management Plan (FMP) for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (USVI) and the reef fish fishery is managed under the Reef Fish FMP of Puerto Rico and the USVI. The two FMPs being revised by Amendments 2 and 5 were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

**Background**

The 2006 revisions to the Magnuson-Stevens Act require that, by 2010, FMPs for the fisheries determined by the Secretary of Commerce to be subject to overfishing must establish a mechanism of specifying ACLs at a level that prevents overfishing and does not exceed the fishing level recommendations of the Council’s Scientific and Statistical Committee (SSC) or other established peer-review processes. Additionally, AMs must be designed that are implemented when an ACL is exceeded. According to the 2010 NMFS’ Report on the Status of the U.S. Fisheries, Caribbean queen conch is undergoing overfishing, as are Grouper Units 1 and 4, Snapper Unit 1, and Parrotfish.

**Actions Contained in the Amendment**

Amendments 2 and 5 modify the species compositions in the reef fish fishery management unit (FMU). The amendments also revise management reference points to transition U.S. Caribbean reef fish and queen conch management from that established in the Comprehensive Sustainable Fisheries Amendment (Caribbean SFA Amendment) of 2005 to that mandated by the revised Magnuson-Stevens Act. Additionally, Amendments 2 and 5 would establish the necessary procedures for determining and implementing ACLs for the U.S. Caribbean island groups, including Puerto Rico, St. Croix in the USVI, and the island group of St. Thomas and St. John in the USVI. Management measures are also proposed to implement harvest prohibitions for three parrotfish species (midnight, blue, rainbow). Recreational bag limits for reef fish are proposed and an additional harvest reduction for parrotfish only for St. Croix would be established. The amendment also establishes AMs to respond to and manage future harvest with respect to the ACLs. Finally, the amendment establishes framework provisions for reef fish and queen conch.

### *Amend the Stock Complexes in the Reef Fish Fishery Management Unit*

The snapper and grouper complexes included within the Reef Fish FMP are currently composed of four grouper and four snapper units. At the present time, unit composition excludes several species of commonly harvested fish and does not aggregate species in an ecologically consistent manner.

The black grouper is currently not included in any of the reef fish species units although this species is frequently caught by recreational anglers. The Council and NMFS propose to add black grouper to Grouper Unit 4 with other grouper species that share common habitat and depth preferences. Both misty and yellowedge grouper are presently included in Grouper Unit 4, but these two species are found at water depths much greater than are the other members currently in Grouper Unit 4. Therefore, Amendments 2 and 5 propose to create a new Grouper Unit 5 that would contain both misty and yellowedge grouper. Finally, the creolefish is rarely caught by commercial or recreational fishers and is proposed to be removed from Grouper Unit 3.

The cardinal snapper is commonly caught by commercial fishers but is not included in any current snapper unit. The amendment proposes to add cardinal snapper to Snapper Unit 2 because of similarities with the queen snapper in landings records and depth distribution. In contrast, the wenchman is presently included as a member of Snapper Unit 2 but clusters most closely with members of Snapper Unit 1 based upon depth and habitat preferences and is therefore proposed to be moved into that unit.

### *Revision of Management Reference Points*

The Magnuson-Stevens Act requires that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY), OY, and stock status determination criteria (including overfished and overfishing thresholds). These reference points are determined for the entire U.S. Caribbean and are intended to provide the means to measure the status and performance of fisheries relative to established goals. Available data in the U.S. Caribbean are not sufficient to support direct estimation of these parameters. Thus, the amendment proposes to use average landings as a proxy for MSY for all units or complexes except queen conch and parrotfish. The MSY proxy of queen conch and parrotfish would be set equal to the fishing level recommendation

specified by the Council's Scientific and Statistical Committee (SSC) (*i.e.* the allowable biological catch (ABC)) for those species. The overfishing threshold of all species will be defined as the overfishing limit (OFL), which would equal the MSY proxy. For most units or complexes, OY is proposed to equal the MSY proxy multiplied by a reduction factor to account for uncertainty in the scientific and management process, the proposed reduction factor being 0.85. The OY of queen conch would not be reduced below the MSY proxy. Specifically for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish, the rule proposes to set the OY equal to zero.

### *Island Specific Management*

This amendment also proposes island-specific management to enable determination of ACLs and application of AMs in response to harvesting activities on a single island (Puerto Rico, St. Croix) or island group (St. Thomas/St. John) without affecting fishing activities on the other islands or island groups. This amendment proposes to implement geographical boundaries between islands and island groups based upon an equidistant approach that uses the mid-point to divide the EEZ among islands. The three proposed island management areas are Puerto Rico, St. Croix, and St. Thomas/St. John.

### *Annual Catch Limits and Accountability Measures*

This amendment proposes to establish ACLs and AMs for queen conch and for all snapper, grouper, and parrotfish units or complexes in the Caribbean Reef Fish FMP. Separate sector ACLs (commercial and recreational) would be established for the Puerto Rico management area where landings data are available for both the commercial and recreational sectors. The other island management areas have only commercial data available and therefore, ACLs would be established for the St. Croix and St. Thomas/St. John management areas based on commercial landings data only.

The ACLs proposed in Amendments 2 and 5 are derived from the OFL (MSY proxy) (or SSC-recommended ABC) and most are reduced by 15 percent to buffer against scientific and management uncertainty, reducing the probability that overfishing will occur. The portion of the parrotfish ACL allocated St. Croix is reduced by an additional 5.8822 percent to further reduce the impacts of parrotfish harvest on Acropora coral species in St. Croix waters, where

parrotfish harvest is particularly intense. This amendment specifies an ACL of zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish. The amendment also proposes an ACL equal to the ABC recommended by the SSC for queen conch, which is far below recent average landings.

### *Management Measures*

Amendments 2 and 5 propose to establish a recreational bag limit for the harvest of snapper, grouper and parrotfish. This amendment also proposes a vessel limit on snapper, grouper, and parrotfish.

### *Accountability Measures*

Accountability measures are designed to prevent fishermen from exceeding the snapper, grouper, parrotfish and queen conch ACLs. The amendment proposes to implement AMs if an ACL has been exceeded based upon a moving multi-year average of landings. Post-season AMs are proposed that would ensure the ACL is not exceeded in the year following a reported ACL overage based on a moving-year evaluation of landings and a subsequent reduction in the length of the fishing season in the following year. If it is determined that the overage occurred because data collection and monitoring improved rather than because catches actually increased, AMs may not be applied.

### *Framework Measures*

Amendments 2 and 5 propose framework measures for both the reef fish and queen conch FMPs. Management measures proposed to be adjusted through the framework procedure include quotas, closures, limits, gear rules, and reference point modifications. The purpose of the framework is to allow the Council to expeditiously adjust these reference points and management measures in response to changing fishery conditions.

### **Consideration of Public Comments**

A proposed rule that would implement measures outlined in Amendments 2 and 5 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2011, whether specifically directed to the amendment or the proposed rule,

will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2011.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648-BA62

#### Amendments to the Reef Fish, Spiny Lobster, Queen Conch and Coral and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS announces that the Caribbean Fishery Management Council (Council) has submitted a 2011 Annual Catch Limits/Accountability Measures Amendment (2011 Caribbean ACL Amendment) to the Fishery Management Plans (FMPs) for Reef Fish Resources, Spiny Lobster, Queen Conch, and Coral and Reef Associated Plants and Invertebrates for the U.S. Caribbean for review, approval, and implementation by NMFS. This amendment proposes actions to establish annual catch limits (ACLs) and accountability measures (AMs) if ACLs should be exceeded for selected reef fish, spiny lobster, and aquarium trade species identified by the Secretary as not undergoing overfishing; allocate ACLs for island management areas and for the commercial and recreational sectors; revise the species within the conch FMU; establish bag limits for selected reef fish species and spiny lobster; and establish framework procedures for spiny lobster and coral and reef associated plants and

invertebrates species. The 2011 Caribbean ACL Amendment would also revise management reference points and status determination criteria for angelfish, boxfish, goatfish, grunts, hogfish, jacks, scups and porgies, spiny lobster, squirrelfish, surgeonfish, triggerfish and tilefish, and aquarium trade species. The intended effect of the 2011 Caribbean ACL Amendment is prevent overfishing of reef fish, spiny lobster and aquarium trade species while maintaining catch levels consistent with achieving optimum yield (OY).

**DATES:** Written comments must be received on or before November 25, 2011.

**ADDRESSES:** You may submit comments on these Amendments, identified by NOAA-NMFS-2011-0017, by any of the following methods:

- **Electronic Submissions:** Submit electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Miguel Lugo and Maria Lopez, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0017" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0017" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Miguel Lugo or Maria Lopez, telephone: 727-824-5305, or e-mail:

[Miguel.Lugo@noaa.gov](mailto:Miguel.Lugo@noaa.gov) or [Maria.Lopez@noaa.gov](mailto:Maria.Lopez@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The four FMPs being revised by the 2011 Caribbean ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

#### Background

The 2006 revisions to the Magnuson-Stevens Act require that, in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve OY within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

#### Actions Contained in the Amendment

The 2011 Caribbean ACL Amendment considers alternatives to revise management reference points, and implement ACLs for those species not subject to overfishing. In addition, the 2011 Caribbean ACL Amendment would redefine the aquarium trade species FMUs within the Reef Fish FMP and the Coral and Reef Associated Plants and Invertebrates FMP, revise the species composition of the FMU within the Queen Conch Resources FMP, manage selected Federal fisheries through defined island management areas in the exclusive economic zone (EEZ). Additionally, the 2011 Caribbean ACL Amendment would establish recreational bag limits for reef fish and spiny lobster species, establish AMs if ACLs are exceeded, and establish framework procedures for implementing management changes in a timelier